IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 4652 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MITRA MANDAL MARKETING PRIVATE LTD. THRO' FIELD

Versus

STATE OF GUJARAT

Appearance:

MR AJ SHASTRI for Petitioner

MR ST MEHTA, Learned APP for Respondent No. 1

NOTICE SERVED for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 16/11/2000

ORAL JUDGEMENT

Heard learned advocate Mr. A.J.Shastri for petitioner and learned APP Mr. S.T.Mehta for respondent no.1. Respondents no. 2 and 3 absent though duly served.

The petitioner has challenged the order passed by Special Judge, Surendranagar below application Exh.1 dated 17.6.2000.

Bajana Police filed Criminal Case vide C.R. II 29 of 2000 against the present petitioner for the offences made punishable under Sections 406 and 420 of the Indinal Penal Code as well under Sections 3 and 7 of Essential Commodities Act. That during the investigation, the Investigating Officer seized documents as enumerated in para.2 of application by way of Muddamal. The said documents consist of vouchers, registers and negotiable instruments (cheques). Pending the trial, the petitioner made application to return the documents on appropriate terms under Section 451 of the Criminal Procedure Code. That vide impugned order, the learned Special Judge, Surendrangar rejected the application by holding that prima facie offence is disclosed against the petitioner and as such, the petitioner is not entitled to the Muddamal.

It may be noted that complaint was filed against the present petitioner by Agricultural Inspector, Dhangadra on allegations that petitioner has been dealing in fertilizer and has committed breach of the provisions of Fertilizer Control Order, 1985, particularly Part 19(1)(6)(g)(2). It is alleged that petitioner has supplied spurious material as fertilizer in the name of DAP Fertilizer to different farmers. On the basis of said allegations, Police Officer raided the premises of the petitioner and recovered the documents. It is also noteworthy that the documents are consisting of two file wherein there are 1 to 45 pages in File No.A and 1 to 51 pages in File No.B which contained the details of goods sold to different farmers and are the documents of sale made on credit. In the second part of documents, there are 38 cheques which are post dated and given by farmers to the petitioner towards the payment of goods supplied to them. Under the circumstances, said documents even if necessary at the time of evidence could be called for from the petitioner or from the concerned Authority and could have been returned to the petitioner on appropriate terms. On behalf of respondent nothing is shown that how the prejudice would be caused to the prosecution if true xerox copies of documents are obtained at the cost of the petitioner by the Investigating Officer and on

undertaking of the petitioner to produce the original documents as and when called for and on such condition after taking security by way of bond, the documents could be returned.

In over all consideration of the facts and circumstances apparent from the record, the matter is remanded back to the Special Judge (Additional Sessions Judge) Surendranagar in order to pass appropriate order for returning the documents produced by Police in Special Case No. C.R. II 29 of 2000 on appropriate terms. The learned Special Judge should direct the Investigating Officer to take xerox copis of the said documents and on comparison, endorsed true xerox copies of two files of documents enumerated at Item No.1 and xerox copies of 38 cheques could be endorsed as true xerox copies after verification as enumerated at Item No.2. The security bond could be taken from the petitioner to return the documentary evidence of two files as and when called for by the Court if required during the evidence. So far as 38 chequs are concerned, the petitioner could be given liberty to discount the same on furnishing security to the extent of the amount of each cheque. Learned Special Judge, Surendranagar is directed to pass appropriate order within two weeks from the date of receipt of writ. Rule to that extent made absolute.

(A.K.Trivedi,J.)
(vipul)